

## **BROKERING IDAHO PROPERTY REQUIRES AN IDAHO REAL ESTATE LICENSE**

This Guideline is designed to advise all brokers and salespersons, whether licensed in Idaho or in another state, that, in order to engage in any real estate brokering activities relating to Idaho real property, a broker or salesperson must hold an active Idaho real estate license. This is true even if the broker, salesperson, or their clients do not reside in or personally enter this state. A broker or salesperson who is not licensed in Idaho is not precluded from all participation in the Idaho transaction; however, he may not engage in any act of “real estate broker” without an Idaho license.

### **1. An Idaho license is required to engage in any brokering activities relating to Idaho real property.**

Idaho law flatly prohibits any person from engaging in any act of a “real estate broker” “in this state” without an active Idaho real estate license. Idaho Code 54-2002.

“Real estate broker” is defined in the license law to include “any person who, directly or indirectly, while acting for another for compensation or promise or expectation thereof, sells, lists, buys, or negotiates, or offers to sell, list, buy or negotiate the purchase, sale, option or exchange of real estate”, and also includes “any person who represents to the public” that he is engaging in any of these acts. Idaho Code 54-2004(34).

A person is “acting in this state” if he is “dealing with any interest in real property . . . that is situated in this state. . .” Idaho Code 54-2004(2).

Under Idaho Code, then, any person who “sells, lists, buys or negotiates” the purchase or sale of real property “situated in this state” is, by definition, engaging in acts requiring an Idaho real estate license.

### **2. A person who does not hold an Idaho license may not “co-broker” Idaho property with an Idaho-licensed broker.**

Idaho Code provides no mechanism to allow a person who does not hold an Idaho license to “co-broker” Idaho property with an Idaho-licensed broker. To the contrary, the law states that each person who performs any defined brokering act – whether as salesperson or broker – must hold an active Idaho license. Idaho Code 54-2002. There is no exception for persons who are licensed in another state and/or who privately contract with an Idaho designated broker to “supervise” or “be responsible for” him. A person who engages in any defined act of “real estate broker” – including selling, listing, buying, or negotiating the purchase or sale of Idaho real property – but who does not hold an active *Idaho* license is guilty of unlicensed practice, regardless of any contractual arrangement with an Idaho-licensed brokerage.

**3. An Idaho designated broker may not “co-broker” Idaho property with a person who does not hold an Idaho license.**

Similarly, an Idaho designated broker violates the license law if he “co-brokers” Idaho property with a person who does not hold an active Idaho license. The license law specifically prohibits a designated broker from allowing any person not licensed by the Commission to represent him, as a salesperson, associate broker, or otherwise, in any real estate business activities requiring a real estate license. Idaho Code 54-2038(3). In order for a salesperson or associate broker to perform broker activities in Idaho, the salesperson or associate broker must hold an active Idaho license and be licensed by the Commission with that broker (as an associate broker or salesperson). Idaho Code 54-2004(35), (36) and Idaho Code 54-2018(4). This state licensing requirement cannot be circumvented by private contract.

Idaho designated brokers should also be aware of the license law’s prohibition against “lending” or “permitting” a license to be used to carry on a business for which an Idaho broker’s license is required. Under the license law, the Idaho designated broker must “actively manage and have full control” of the transaction. Idaho Code 54-2040(5). Thus, an Idaho designated broker may not contract away his statutory management responsibilities; the Idaho designated broker, and not any other person, must be the active manager in control of the Idaho transactions.

**4. Communication and cooperation that do not involve specific acts of brokering are not prohibited.**

There are situations in which a broker or salesperson licensed in another state but not in Idaho, (“non-Idaho licensee”) has an existing client who wishes to buy or sell Idaho property. Although the non-Idaho licensee is prohibited from engaging in any act specified as “brokering,” he is not barred from all participation in the transaction.

a. Communication with the client.

A non-Idaho licensee may communicate with, consult, or advise his or her client about the Idaho transaction. Advising or consulting with the client – even after the client has hired an Idaho broker – do not constitute acts of brokering and do not require a real estate license.

b. Cooperation with the Idaho broker.

Although a non-Idaho licensee may not “co-broker” Idaho property with an Idaho broker, such person is not prohibited from cooperating with an Idaho broker. For example, he may consult and advise the Idaho broker concerning the objectives and concerns of the client. Or, he may coordinate information between the Idaho transaction and other non-Idaho transactions.

c. Non-Idaho licensee participating in an Idaho transaction may NOT engage in brokering.

Although a non-Idaho licensee may advise his client and may collaborate with the Idaho broker with respect to Idaho property, he is prohibited from engaging in any act constituting “brokering.” For example, a salesperson or broker who is not licensed in Idaho may not:

- Transmit offers or counteroffers to sell the client’s property directly to potential buyers;
- Receive offers to buy the property directly from potential sellers; or
- Engage in any communication, written or oral, that may be construed as “negotiation.”

#### **5. Advertising Idaho property.**

Advertising and marketing Idaho property are not acts specifically defined as “brokering,” and do not, in themselves\*, require an Idaho real estate license. However, Idaho Code does impose certain requirements relating to the advertisement of Idaho property. Idaho Code 54-2053. A person, including an individual or entity that is not licensed in Idaho, *may* market and advertise Idaho real property, *provided* the statute’s advertising requirements are met, including:

- Every broker or salesperson named in the advertising holds an Idaho license;
- The licensed business name of the Idaho broker is included in the advertisement; and
- The advertisement is not otherwise misleading.

\* (Only persons licensed in Idaho or another state may seek any type of referral fee or finder’s fee. Idaho Code 54-2054(3).

#### **6. Fee-sharing arrangements between licensed brokers.**

The license law prohibits Idaho brokers from “fee-splitting,” i.e., sharing brokerage fees with, or paying any portion to, any person *except* persons who are licensed “in Idaho or another state or jurisdiction.” Idaho Code 54-2054(2).

This “fee-splitting prohibition” does not apply to fee arrangements made between Idaho-licensed brokers and brokerages licensed in other states. The fee sharing arrangements made between an Idaho-licensed broker and a broker or salesperson not licensed in Idaho are beyond the regulatory interest of the Commission. A broker not licensed in Idaho may, consistent with the Idaho license law, earn, in addition to a referral fee, a fee for performing other, non-broker services related to an Idaho property transaction.

#### **7. Sanctions for unlicensed activity.**

Unlicensed brokering activity is a misdemeanor crime in Idaho punishable by imprisonment and a fine of \$5,000 for individuals, and \$10,000 for a business entity. In addition, the Idaho Real Estate Commission is authorized to take administrative action against anyone engaged in unlicensed brokering activity, and to assess a civil penalty up to \$5,000, plus costs and attorney fees.